

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANQUA CUMMINGS,

Petitioner,

v.

RANDEE REWERTS,

Respondent.

Case No. 1:18-cv-1415

HON. JANET T. NEFF

OPINION AND ORDER

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) recommending that this Court decline to consider the merits of the habeas petition under the concurrent sentencing doctrine. The matter is presently before the Court on Petitioner's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order. The Court will also issue a Judgment in this § 2254 proceeding. *See Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013) (requiring a separate judgment in habeas proceedings).

Petitioner presents one overarching objection to the Magistrate Judge's application of the concurrent sentencing doctrine. Petitioner asserts that "[t]he present case is not appropriate for application of the concurrent sentencing doctrine" because there is "always a chance that a conviction may be overturned at some point in the proceedings" (Obj., ECF No. 15 at PageID.248).

Petitioner's objection is properly denied.

The Magistrate Judge properly set forth the authority governing the concurrent sentencing doctrine and identified the Court’s “discretion to decline to hear a substantive challenge to a conviction when the sentence the petitioner is serving on the challenged conviction is concurrent with an equal or longer sentence on a valid conviction” (R&R, ECF No. 14 at PageID.236, citing *United States v. Hughes*, 964 F.2d 536, 541 (6th Cir. 1992), and *Dale v. Haeberlin*, 878 F.2d 930, 935 n.3 (6th Cir. 1989)). As set forth more fully in the Report and Recommendation, “Petitioner is presently serving three concurrent five-year felony-firearm sentences and, upon expiration of those sentences, will begin serving concurrently the life sentence [without parole] and all of the remaining indeterminate sentences” (*id.* at PageID.239). Petitioner’s objection, which is based on pure speculation, does not reveal any factual or legal error by the Magistrate Judge in her analysis or ultimate recommendation for the Court to decline to review the merits of Petitioner’s habeas petition.

Having determined Petitioner’s objection lacks merit, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. *See* RULES GOVERNING § 2254 CASES, Rule 11 (requiring the district court to “issue or deny a certificate of appealability when it enters a final order”). The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001).

“When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. “Where a plain procedural bar

is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.* Upon review, this Court finds that reasonable jurists would not find the Court’s procedural ruling debatable as to each issue asserted. A certificate of appealability will therefore be denied.

Accordingly:

IT IS HEREBY ORDERED that the Objection (ECF No. 15) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 14) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (ECF No. 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED as to each issue asserted.

Dated: October 6, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge